



February 7, 2001

Ms. Amanda Crawford
Assistant Attorney General
Public Information Coordinator
Office of the Attorney General
P.O. Box 12548
Austin, Texas 78711-2549

OR2001-0479

Dear Ms. Crawford:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 143823.

The Office of the Attorney General (the "OAG") received a request for records of the OAG's Crime Victims' Compensation Division that pertain to a named victim of a specific criminal incident. You explain that you have released much of the responsive information that exists within the OAG's possession. However, you claim that portions of the responsive information are excepted from disclosure under section 552.101 of the Government Code in conjunction with various forms of privacy, and section 552.132 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

We begin with your claim regarding section 552.132 of the Government Code. The Seventy-sixth Legislature amended chapter 552 of the Government Code, creating section 552.132, which reads

- (a) In this section, "crime victim" means a victim under Subchapter B, Chapter 56, Code of Criminal Procedure, who has filed an application for compensation under that subchapter.
- (b) A crime victim may elect whether to allow public access to information held by the crime victim's compensation division of the attorney general's office that relates to:
 - (1) the name, social security number, address, or telephone number of the crime victim; or
 - (2) any other information the disclosure of which would identify or tend to identify the crime victim.

(c) An election under Subsection (b) must be:

- (1) made in writing on a form developed by the attorney general for that purpose and signed by the crime victim; and
- (2) filed with the crime victims' compensation division before the third anniversary of the date that the crime victim filed the application for compensation.

(d) If the crime victim elects not to allow public access to the information, the information is excepted from the requirements of Section 552.021. If the crime victim does not make an election under Subsection (b) or elects to allow public access to the information, the information is not excepted from the requirements of Section 552.021 unless the information is made confidential or excepted from those requirements by another law.

(e) If the crime victim is awarded compensation under Section 56.34, Code of Criminal Procedure, as of the date of the award of compensation, the name of the crime victim and the amount of compensation awarded to that victim are public information and are not excepted from the requirements of Section 552.021.

Here, it is apparent that the crime victim who is the subject of the request has received compensation under section 56.34 of the Code of Criminal Procedure, and therefore, as you seem to acknowledge, the crime victim's name and the amount of compensation awarded to the victim must be released under section 552.132(e). However, you claim that the other types of information described in section 552.132(b) are excepted from required disclosure. Essentially, you argue that because three years have not yet elapsed since the date on which the claimant filed an application for compensation, it is immaterial that neither the crime victim, who was a child at the time of the crime, nor the claimant, who actually filed the application for compensation, has submitted an election for disclosure or non-disclosure under section 552.132(b).

We interpret section 552.132 to afford crime victims or claimants three years from the date of filing an application for compensation in which to submit an election for disclosure or non-disclosure. Gov't Code § 552.132(c)(2). Once those three years elapse, if the crime victim or claimant has not made an election, or has elected to allow public access to the information, the information described in section 552.132(b) may not be withheld, unless it is made confidential, or excepted from those requirements, by another law. *Id.* § 552.132(d). However, during those three years, we find that the information is excepted from required disclosure under section 552.132 where a crime victim or claimant has not yet submitted an election for non-disclosure. *See id.* § 552.132(c), (d).

Therefore, in this case, because three years have not elapsed since the date that the claimant filed an application for compensation, we find that, even though no election form has been submitted under section 552.132(b), the OAG must withhold the types of information described by section 552.132(b), with the exception of the crime victim's name and any amounts of compensation awarded, both of which must be released pursuant to section 552.132(e). Accordingly, the OAG must withhold information that relates to the crime victim's social security number, address, telephone number, or any other information that would tend to identify the crime victim, such as the crime victim's birth date. We believe that the release of the crime victim's birth date in conjunction with his name tends to identify the crime victim for the purposes of section 552.132(b). We have marked the information that the OAG must withhold under section 552.132(b).

We note from our review of the documents that you apparently wish to withhold also the claimant's date of birth under section 552.132. Dates of birth are not listed under subsection 552.132(b)(1). Therefore, whether the dates of birth at issue here are excepted from disclosure under section 552.132 depends on whether they tend to identify the crime victim. *See* Gov't Code § 552.132(b)(2). We find that the date of birth of the claimant does not tend to identify the crime victim. Therefore, the OAG may not withhold the claimant's date of birth under section 552.132.

We turn now to your argument that certain medical information contained in the submitted documents is confidential under the Medical Practice Act ("MPA"). Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Accordingly, section 552.101 encompasses confidentiality provisions such as those found in the MPA. The MPA provides in relevant part:

(b) A record of the identity, diagnosis, evaluation, or treatment of a patient by a physician that is created or maintained by a physician is confidential and privileged and may not be disclosed except as provided by this chapter.

(c) A person who receives information from a confidential communication or record as described by this chapter . . . may not disclose the information except to the extent that disclosure is consistent with the authorized purposes for which the information was first obtained.

The MPA requires that any subsequent release of medical records be consistent with the purposes for which a governmental body obtained the records. *Open Records Decision No. 565 at 7 (1990)*.¹ Thus, the MPA governs access to medical records. *Open Records*

¹Inasmuch as the Seventy-sixth Legislature intended no substantive change in the law in codifying the Medical Practice Act at subtitle B of title 3 of the Occupations Code, open records decisions interpreting the former section 5.08 of article 4495b of Vernon's Texas Civil Statutes retain their relevance. *See* Act of May 13, 1999, 76th Leg., R.S., ch. 388, § 7, 1999 Tex. Gen. Laws 1431, 2440.

Decision No. 598 (1991). Moreover, information that is subject to the MPA includes both medical records and information obtained from those medical records. *See* Occ. Code § 159.002(a), (b), (c).

The documents containing the medical information do not appear to have been created or maintained by a physician. Moreover, you do not state, and there is no indication on the documents themselves that the medical information was obtained from medical records. Therefore, we find that the medical information at issue is not subject to the MPA.

You also claim that the claimant's date of birth and the medical information are confidential under section 552.101 in conjunction with common law and constitutional privacy. Section 552.101 of the Government Code protects "information considered to be confidential by law, either constitutional, statutory, or by judicial decision," including information coming within the common law right to privacy. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977). Common law privacy protects information if it is highly intimate or embarrassing, such that its release would be highly objectionable to a reasonable person, *and* it is of no legitimate concern to the public. *Id.* at 683-85.

Section 552.101 also incorporates the constitutional right to privacy. The United States Constitution protects two kinds of individual privacy interests. The first interest is an individual's interest in independently making certain important personal decisions about matters that the United States Supreme Court has stated are within the "zones of privacy," as described in *Roe v. Wade*, 410 U.S. 113 (1976) and *Paul v. Davis*, 424 U.S. 693 (1976). The "zones of privacy" implicated in the individual's interest in independently making certain kinds of decisions include matters related to marriage, procreation, contraception, family relationships, and child rearing and education. The second individual privacy interest involves matters that are outside the zones of privacy but that nevertheless implicate an "individual's interest in non-disclosure or confidentiality." Open Records Decision No. 455 at 4 (1987) (quoting *Fadjo v. Coon*, 633 F.2d 1172, 1175 (5th Cir. 1981)). To determine whether a given situation triggers the constitutional right to privacy, this office applies a balancing test, weighing the individual's interest in privacy against the public right to know the information. *See* Open Records Decision No. 455 at 5 (citing *Ramie v. City of Hedwig Village*, 765 F.2d 490, 492 (5th Cir. 1985)).

We consider neither the date of birth nor the medical information at issue to be intimate or embarrassing. Generally, we do not consider a date of birth to be intimate or embarrassing. The fact that the birth date at issue is that of a claimant for crime victim compensation does not change this analysis because as explained above, the claimant's birth date in this case does not tend to identify the crime victim. Therefore, we do not believe that there is a privacy interest in the claimant's birth date. Moreover, having reviewed the medical information at issue, we find that it too is neither intimate nor embarrassing and is therefore not protected by common law privacy as encompassed by section 552.101.

In conclusion, pursuant to section 552.132, the OAG must withhold information that relates to the crime victim's social security number, address, or telephone number. Also pursuant to section 552.132, the OAG must withhold any other information that would tend to identify the crime victim, including the crime victim's birth date. The OAG must release the remainder of the submitted information which includes the crime victim's name, the birth date of the claimant, and the medical information. We have marked the non-redacted set of documents in accordance with this ruling.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

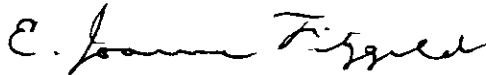
If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

²Because this ruling requires the OAG to withhold all information that identifies or tends to identify the crime victim under section 552.132, it is not necessary to address your argument regarding the Texas constitution.

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,

A handwritten signature in cursive script, appearing to read "E. Joanna Fitzgerald".

E. Joanna Fitzgerald
Assistant Attorney General
Open Records Division

EJF/er

Ref: ID# 143823

Encl: Submitted documents

cc: Ms. Karen Williamson
P.O. Box 1495
Corpus Christi, Texas 78403
(w/o enclosures)